COURT NO.2

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) 6682/2001
(Old No. 23207/1993)

Gajendra Singh
S/o Sri Indra Pal, Singh,
R/o Village Chudiyala,
P.O. Jansath,
District Muzaffarnagar.

.....Petitioner

Versus

Senior Superintendent of Police,
Nainital.

..... Respondent

Sri Rajendra Dobhal, learned Counsel for the petitioner.
Sri H.M. Raturi, learned Standing Counsel for the State.

10th December, 2007

Hon'ble P.C. Verma, J.

By means of this writ petition, the petitioner has prayed for a writ of Certiorari to quash the impugned termination order dated 7.6.1993 and has further prayed for a writ of Mandamus to treat the petitioner in service and to pay him salary accordingly.

2. I have heard learned Counsel for the parties and perused the record.

3. Petitioner was appointed after his due selection pursuant to the advertisement made for the post of Constable. After his selection, the petitioner was sent for training and during the course of training he remained absent for 16 days. According to the petitioner, he had gone under operation of appendix and for which he was

also granted extension of time. The services of the petitioner later on have been terminated by the impugned order.

4. A perusal of the termination order shows that the order is terminated simpliciter, but on lifting the veil of the termination order, it is found that the termination order was passed on account of petitioner's being absent from duty for which he submitted medical certificate. Under these circumstances, if the petitioner's services were to be terminated, it could have been terminated after following the procedure prescribed under Fundamental Rule 18, which has not been done in the present case.

5. Further, it is worth to notice that training period of the petitioner was extended for three months and the petitioner was declared successful after satisfactory completion of the training. But after declaration of result of training, the services of the petitioner were terminated when he reported on his duties after his posting at Nainital. Through the impugned order has been passed as termination simpliciter but the same is motivated by petitioner's absence from duty, which amounts to misconduct. Thus, it entails a civil consequence and in such a situation, the procedure prescribed under Fundamental Rule 18 was mandatory to be followed before passing the impugned termination order.

6. For the reasons recorded above, the impugned termination order cannot be sustained in the eye of law. Accordingly, the termination order dated 7.6.1993 is hereby quashed. Since the petitioner has already been

working on the consequence of interim order dated 3.7.1993, no further order is required. The petition is allowed. No order as to costs.

(P.C. Verma, J.)

Prabodh